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# **In the Supreme Court of the United States**

OCTOBER TERM, 1961

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No. 604

HARRY CLIFFORD PORTER, PETITIONER

*v.*

AETNA CASUALTY & SURETY COMPANY

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ON WRIT OF CERTIORARI TO THE ~~UNITED STATES~~  
COURT OF APPEALS FOR THE DISTRICT OF  
COLUMBIA CIRCUIT

---

BRIEF FOR THE UNITED STATES  
AS AMICUS CURIAE

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## **OPINIONS BELOW**

The opinion of the District Court for the District of Columbia (R. 27-31) is reported at 185 F. Supp. 302. The opinion of the Court of Appeals for the District of Columbia Circuit (R. 47-54) is not yet reported.

## **JURISDICTION**

The judgment of the Court of Appeals for the District of Columbia Circuit was entered on July 13,

1961 (R. 55). A timely petition for rehearing *en banc* was denied on August 21, 1961 (R. 65). The petition for certiorari was filed on September 18, 1961, and granted on December 11, 1961 (R. 66). The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

### QUESTION PRESENTED

Whether disability benefits paid by the United States to an incompetent veteran and deposited by his guardian in an account in a federal savings and loan association are exempt from attachment under 38 U.S.C. 3101(a).

### STATUTE INVOLVED

Section 3101 of Title 38 U.S.C. provides, in pertinent part, as follows:

(a) Payments of benefits due or to become due under any law administered by the Veterans' Administration shall not be assignable except to the extent specifically authorized by law, and such payments made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. The preceding sentence shall not apply to claims of the United States arising under such laws nor shall the exemption therein contained as to taxation extend to any property purchased in part or wholly out of such payments. The provisions of this section shall not be construed to prohibit

the assignment of insurance otherwise authorized under chapter 19 of this title, or of servicemen's indemnity.

\* \* \* \*

### STATEMENT

Harry Clifford Porter, the petitioner, is an incompetent veteran of the United States armed forces whose estate, insofar as it is in issue here, is derived solely from payment by the United States of disability benefits for a service-connected disability (R. 12). In 1952, while still a non-commissioned officer in the Air Force, Porter was indicted for murder but was acquitted by reason of insanity and committed to St. Elizabeths Hospital (R. 48). The murder victim's administratrix brought a wrongful death action against certain individuals insured by respondent Aetna Casualty and Surety Company, which suit was ultimately settled by the respondent (R. 48). Thereafter, under the subrogation provisions of its policy, the respondent sued and obtained an indemnity judgment against Porter (R. 48).

Upon receipt of this indemnity judgment, Aetna attached the checking account of Porter's committee and also the accounts in two federal savings and loans associations <sup>1</sup> which also stood in the name of the com-

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<sup>1</sup> The two associations involved are the Columbia Federal Savings and Loan Association and the Prudential Building Association (R. 6-7, 9-10). Accounts in both associations are insured up to \$10,000 by the Federal Savings and Loan Insurance Corporation (R. 24, 33, 35). At the time of Aetna's attachment pursuant to its judgment, Porter's

mittee (R. 48, 2-3, 4, 6). These accounts were established and augmented by Porter's committee solely from payments to Porter received under disability compensation laws administered by the Veterans Administration (R. 12, 48-49). On petitioner's motion, the district court quashed the attachments except as to dividends aggregating \$869.84 which had been added to the accounts in the federal associations<sup>2</sup> (R. 31-32).

The district court's decision was based on its ruling that under the provisions of 38 U.S.C. 3101(a), *supra*, pp. 2-3, benefits paid to a veteran and deposited in a savings account are exempt from attachment. Following the guidelines provided by this Court in three decisions interpreting this exemption statute,<sup>3</sup> the district court held that benefits deposited in a savings account are not "permanent investments"<sup>4</sup> of the type this Court had held beyond the ambit of protection afforded by the exemption provisions. In light of the purposes of the Act the district court found no dis-

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accounts, including dividends, amounted to \$5,791.20 in Columbia Federal Savings and Loan Association and \$3,078.63 in Prudential (R. 11, 27, 32).

<sup>2</sup> Petitioner did not appeal the District Court's ruling on the dividends. Similarly, the respondent did not challenge on appeal the lower court's ruling on the checking account. Hence, the funds represented by the dividends on the savings and loan deposits and those in the checking account are not in issue here.

<sup>3</sup> *Trotter v. Tennessee*, 290 U.S. 354; *Lawrence v. Shaw*, 300 U.S. 245; *Carrier v. Bryant*, 306 U.S. 545. These decisions are discussed in detail in the Argument, *infra*, pp. 11-14.

<sup>4</sup> *Trotter v. Tennessee*, 290 U.S. at 357.

inction as to monies deposited in a savings account in a bank or those deposited, as here, in a savings account in a federal savings and loan association (R. 27-31).

The court of appeals, by a divided vote, reversed. The majority (Miller, C.J. and Burger, J.) held that, since the committee maintained a checking account for the veteran, the funds deposited in the savings accounts were not for immediate needs and consequently lost the protection of the exemption provision. In reaching this conclusion, the majority also relied on its view that savings deposits in a savings and loan association, unlike such deposits in a bank, represent investments not entitled to immunity from attachment (R. 47-52). The dissenting judge (Prettyman, J.) believed that the formal, legal distinctions between a savings account in a bank and one in a savings and loan association should not be dispositive. In his opinion, the significant question under the exemption statute is an issue of fact—to what uses are such funds, whether deposited in a bank or an association, actually put. Since the record here was not adequate to resolve this factual determination, he would have remanded the case for amplification on this issue (R. 53-54).<sup>5</sup>

### SUMMARY OF ARGUMENT

Disability compensation payments made by the Veterans Administration to petitioner, and deposited on his behalf by his committee in savings accounts

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<sup>5</sup> Porter subsequently filed a petition for rehearing *en banc* which was denied (R. 56-65).

in federal savings and loan associations, are exempt from attachment under the provisions of 38 U.S.C. 3101(a).

A. The Act provides that the exemption applies to all payments of benefits under any law administered by the Veterans Administration "either before or after receipt by the beneficiary". The tests or standards to be applied in determining whether the particular form of retention of the benefit payments is entitled to exemption have been established in three prior decisions of this Court on the veterans' exemption provisions of the federal law. *Trotter v. Tennessee*, 290 U.S. 354; *Lawrence v. Shaw*, 300 U.S. 245; *Carrier v. Bryant*, 306 U.S. 545. The prerequisites for exemption enunciated in those decisions are (1) that the form of retention constitute a usual or normal method of retaining monies to meet the demands of maintenance and support; (2) that the benefit monies are not used for a purchase of property, thereby losing the quality of monies; and (3) that the benefit monies are not utilized for *permanent* investments in land, merchandise, or securities.

B. Under all three tests, benefit monies deposited in a savings account, as was the case here, are exempt from attachment. The Court has held that monies deposited in a checking account are exempt; such a deposit represents a normal mode of retention to meet the veteran's needs as they arise. *Lawrence v. Shaw, supra*. By the same token, benefit monies placed in a savings account are normally available and are used for the veteran's and his family's maintenance and support, even if the needs and obliga-

tions met by withdrawals from savings recur or occur less frequently than those to be met by checking. Moreover, monies placed for savings are not a conversion of the benefits into property in the sense intended in this Court's prior decisions; these monies, like those deposited in a checking account, are normally available as such on demand and never "los[e] the quality of moneys". *Trotter, supra*, 290 U.S. at 356. Nor are monies deposited in a savings account excluded from statutory protection as *permanent* investments. As this Court held in *Lawrence, supra*, the fact that a deposit may earn interest is not enough to place it beyond the ambit of immunity.

C. The conclusion that monies in a savings account are exempt is not affected by the fact that the accounts here were in federal savings and loan associations rather than in a bank. It is true that the depositor in a federal association is technically a shareholder rather than a creditor (like a depositor in a bank), but the pertinent similarities between the two types of deposits are dispositive with regard to the issue of exemption under the statute. Both savings devices are ordinarily used in the same fashion for maintenance and support, both represent no real conversion of money into property, and neither is a permanent investment of the type barred from immunity under this Court's previous decisions in this area.

## ARGUMENT

### Veterans' Disability Benefits, Deposited in a Savings Account in a Federal Savings and Loan Association, Are Exempt from Attachment Under 38 U.S.C. 3101(a)

#### A. *The Standards of Interpretation of the Exemption Provision Are Established by Prior Decisions of This Court.*

Section 3101(a) of Title 38 U.S.C.<sup>6</sup> is the most recent enactment in a line of legislation, dating from 1873, extending immunity from taxation and legal process to the benefits paid to veterans and to other beneficiaries under laws administered by the Veterans Administration.<sup>7</sup> It provides, in pertinent part, that such benefits "shall be exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever \* \* \*." *Supra*, pp. 2-3. The immunity extends to the payment of such benefits "either before or after receipt by the beneficiary".<sup>8</sup> By way of exception, however, the statute provides that the exemption does not apply to "any property purchased in part or wholly out of such payments".<sup>9</sup>

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<sup>6</sup> Act of September 2, 1958, 72 Stat. 1229.

<sup>7</sup> Act of March 3, 1873, Rev. Stat. § 4747 (1878); World War Veterans' Act of 1924, c. 320, § 22, 43 Stat. 607, 613; Act of August 12, 1935, c. 510, § 3, 49 Stat. 607, 609.

<sup>8</sup> This language, expressly applying immunity to payments of benefits even after receipt by the beneficiary, was incorporated for the first time in the 1935 statute, *supra*, 38 U.S.C. (1952 ed.) 454a.

<sup>9</sup> While the statutory provision reads only that the exemption "contained as to taxation" shall not extend to property

The issue posed by this case is whether benefits paid to an incompetent veteran, which upon receipt are kept on his behalf in a savings account in a federal savings and loan association, are exempt from attachment within the meaning and in view of the underlying purposes of this legislation. At the outset, we take note of the liberal construction traditionally and consistently given to legislation, such as this, affording benefits to veterans. In addition, before discussing this particular case, we examine the three prior decisions of this Court and the rulings of state courts with regard to this exemption statute in order to ascertain the purposes of the legislation and the proper and controlling standards to be applied in interpreting it.

1. Section 3101(a), like all legislation conferring benefits on veterans, must be liberally construed. *E.g.*, *Trotter v. Tennessee*, 290 U.S. 354, 356; *Hoepfel v. Westover*, 79 F. Supp. 794 (S.D. Cal.); *Yake v. Yake*, 170 Md. 75, 183 A. 555; *Mixon v. Mixon*, 203 N. Car. 566, 166 S.E. 516; *Surplus v. Remmele*, 194 Misc. 1036, 87 N.Y.S. 2d 651 (County Ct., Broome Cty.).<sup>10</sup> This Court stated in *Trotter*, *supra*, that the exemption provision was "not to be read so grudgingly as to thwart the purpose of the law-

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purchased in whole or in part out of the benefit payments, this Court has held that the exemption as to creditors' claims similarly does not extend to such purchases. *Carrier v. Bryant*, 306 U.S. 545, 547.

<sup>10</sup> See, also, *Derzis v. Vafes*, 227 Ala. 471, 150 So. 461; *Rucker v. Merck*, 172 Ga. 793, 159 S.E. 501; *Wilcox v. Wynn*, 83 N.E. 2d 411 (Mun. Ct., Ohio).

makers". 290 U.S. at 356. In the same vein, a state court, interpreting the veterans' exemption provisions, has observed that "[t]he statute should be construed broadly in favor of disabled soldiers in order that the purpose and intent of the act might be fulfilled". *Yake v. Yake*, *supra*, 170 Md. at 77-78. The solicitude of Congress for veterans, exemplified here, is of long standing and is reflected in many different benefits. See, *e.g.*, *United States v. Oregon*, 366 U.S. 643, 647.

The basic purpose of this exemption legislation, moreover, as with comparable legislation for the immunity of similar types of benefits,<sup>11</sup> is to provide generally for the maintenance and support of the group of beneficiaries protected, without which they might become impoverished. *Lawrence v. Shaw*, 300 U.S. 245, 250. The benefits protected by 38 U.S.C. 3101(a) are those paid under laws administered by the Veterans Administration, here disability compensation, in other instances pensions, retirement pay, death benefits, or insurance proceeds. Payment of the particular benefit represents, of course, the grateful appreciation of the country for the veteran's military service. Establishment of immunity for such benefits reflects the further legislative recognition that these

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<sup>11</sup> There are many type of exemption provided by state law, dealing with protection of such funds as insurance proceeds, disability benefits, wages, etc. The judicial holdings as to the limits of these exemptions form no consistent pattern, the variations depending on differences in the statutory language or in interpretations of legislative purpose. For a collection of the cases, see, *e.g.*, 35 Corpus Juris Secundum, § 26-62, pp. 525-584.

benefits are not, in the main, unrelated to need but rather serve to maintain the veteran and his family, and consequently should be kept inviolate for that paramount purpose.

As stated by a lower New York court in *Surplus v. Remmele*, *supra*, "[t]he plain purpose of the act was to promote the comfort of the soldier; to secure to him the bounty of the government free from the claims of creditors; and to insure him *and his family* a safe, although modest, maintenance so long as their needs required it". 194 Misc. at 1039, 87 N.Y.S. 2d at 654. The Maryland court in *Yake v. Yake*, explained the legislative purpose in this way (170 Md. at 77, 183 A. at 556):

The manifest intention of Congress in incorporating this provision in this act was to guard those unfortunates \* \* \* from imposition of others or the depletion of their maintenance and support by their own improvidence, and to assure to them a certain subsistence.<sup>12</sup>

While affording the veteran and his family this modicum of maintenance and support, the statutory immunity also lessens the possibility that the beneficiaries will become public charges. *Derzis v. Vafes*, *supra*; cf. *In re Flanagan*, 31 F. Supp. 402 (D.D.C.).

2. This is not the first time an issue involving the veterans' exemption provisions has been presented to this Court. On three prior occasions, the Court has interpreted the statutes preceding 38 U.S.C. 3101

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<sup>12</sup> See also, *e.g.*, *Derzis v. Vafes*, 227 Ala. 471, 150 So. 461; *Elbert Sales Co. v. Granite City Bank*, 55 Ga. App. 835, 192 S.E. 66; *In re Flanagan*, 31 F. Supp. 402 (D.D.C.).

(a), which were essentially similar to the present Act, and has established the standards and criteria controlling adjudication. See *Trotter v. Tennessee*, 290 U.S. 354; *Lawrence v. Shaw*, 300 U.S. 245; *Carrier v. Bryant*, 306 U.S. 545.

In *Trotter, supra*, the question was whether land and buildings purchased on behalf of an incompetent veteran with disability benefits paid to him by the Veterans Administration were exempt from taxation under Section 22 of the World War Veterans Act.<sup>13</sup> The Court held two considerations dispositive in reaching its decision that the exemption did *not* extend to the land and buildings purchased with benefit monies. The first was that "there was an end to the exemption when [the benefit monies] lost the quality of monies and were converted into land and buildings." 290 U.S. at 356. Equally significant as a determinative factor was the Court's view that the immunity did not extend to "permanent investments or the fruits of business enterprises" (emphasis added). 290 U.S. at 357. The Court emphasized that (*ibid.*):

Veterans who *choose to trade* in land or in merchandise, in bonds or in shares of stock, must pay their tribute to the state [emphasis added].

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<sup>13</sup> Act of June 7, 1924, 43 Stat. 607, 613. That Act provided in pertinent part:

\* \* \* the compensation, insurance, and maintenance and support allowance payable \* \* \* shall not be assignable; shall not be subject to the claims of creditors of any person to whom an award is made \* \* \*; and shall be exempt from all taxation: \* \* \*

Four years later, in 1937, these exemption provisions were once more before the Court on the issue of whether benefits paid an incompetent veteran for disability compensation and insurance, and deposited by his guardian in a checking account<sup>14</sup> in a bank, were exempt from local taxation.<sup>15</sup> *Lawrence v. Shaw*, 300 U.S. 245. Noting that the basic purpose of the statute was the maintenance and support of the veteran (300 U.S. at 250), the Court reiterated the criteria for exemption established in *Trotter*, viz, (1) that the benefits must be substantially identifiable as monies and (2) that they must not be converted into "permanent investments or the fruits of business enterprises" (300 U.S. at 248, 250). Measured by these criteria, monies in a checking account are plainly exempt, and the Court so held. "[N]either [the veteran] nor his guardian is obliged to keep the moneys on his person or under his roof". 300 U.S. at 250. Since the immunity continues under the Act until after receipt of benefits, "the *usual methods of receipt* must be deemed available so that the amounts

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<sup>14</sup> While it is not absolutely clear from the opinion whether it was a checking account, this would appear to have been the case. The issue was presented on a stipulation of fact merely describing the funds as "deposits in banks" (300 U.S. at 247, fn. 4). The Court, however, described the funds as being subject to draft, and it did not appear to the Court that there was any allowance of interest (300 U.S. at 250).

<sup>15</sup> Exemption was claimed under the 1924 Act, *supra*, and under the Act of August 12, 1935, § 3, 49 Stat. 607, 609, 38 U.S.C. (1952 ed.) 454a. The Court's decision was based on the 1935 Act which, in pertinent part, is almost identical with 38 U.S.C. 3101(a).

paid by the Government may be properly safeguarded and used as the needs of the veteran may require" (*ibid.*; emphasis added). Further, the Court, while noting that some bank deposits "under a special agreement" might be the type of permanent investment outside the ambit of immunity, went on to state that "we do not suggest that a mere allowance of interest upon deposits would be enough to destroy an immunity where it would otherwise attach" <sup>16</sup> (300 U.S. at 250).

In the third decision, in 1939, *Carrier v. Bryant*, 306 U.S. 545, the Court held that negotiable notes and United States bonds purchased out of benefit payments made to an incompetent veteran were not exempt from the claims of creditors under the 1935 Act. The decisive factors again were those set forth in *Trotter*, i.e., (1) the conversion of the benefit monies into something not retaining the essential "quality of moneys" and (2) the conversion of the benefits into something going beyond maintenance and support—into "permanent investments or the fruits of business enterprises" (306 U.S. at 549).

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<sup>16</sup> The only "special agreement" we can think of which the Court might have had in mind as depriving the veteran of the benefits of immunity would be a trust fund agreement whereby the bank would invest the monies on deposit on behalf of the depositor. See e.g., note, *Exemption of Income from Property Purchased with Exempt Insurance Proceeds*, 47 Yale L. J. 1408.

**B. Under These Standards, Veterans' Benefits Deposited in a Savings Account Are Exempt from Attachment under 38 U.S.C. 3101(a).**

1. The controlling standards of exemption established in the decisions just discussed, when applied to the instant case, demonstrate that petitioner's benefit monies deposited in a savings account come within the protective scope of 38 U.S.C. 3101 (a).<sup>17</sup> These monies were used for petitioner's maintenance and support; they have not been translated into property but are readily identifiable as monies; and they do not fall into the area of "permanent investments", which this Court has held to be beyond the protection of the exemption.

(a). In reaching the contrary result, the court below gave considerable weight to its belief that, because Porter's committee maintained and used a checking account for certain of the ward's immediate needs, the benefits deposited in the savings accounts were presumptively unnecessary for maintenance and support<sup>18</sup> (R. 51-52). This approach adopts a concept of maintenance and support that is unduly re-

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<sup>17</sup> For purposes of our argument in this Point—that the exemption applies to benefit monies in a savings account—the assumption is that the exemption applies regardless of whether the account is in a savings bank, commercial bank, or in a savings and loan association. In Point C, *infra*, we show that the distinctions between these accounts are not such as to require or warrant different treatment under this statute.

<sup>18</sup> The court concluded that, by leaving some money in the checking account and placing the rest in the savings account to earn some income, Porter's committee considered the savings deposits "to be surplus income over and above ordinary and necessary expenses" (R. 52).

strictive and unrealistic in the light of present-day checking and savings account practices. In furnishing benefit payments and protecting them from creditors' suits and from taxation, Congress did not extend the shield of immunity only to government-derived funds maintained in a checking account and used to meet monthly obligations that veterans and their families regularly incur. Savings accounts are also ordinarily used for the payment of various types of obligations which are properly characterized as maintenance and support even though they may occur or recur less frequently than obligations met by a checking account. Schooling, a down payment on a home or an automobile, the purchase of furniture, the payment of emergency medical bills, taxes, death and funeral expenses—these are but a few examples of ordinary obligations which are often not met with funds in a checking account. They are expenditures for present day necessities of life. In common experience they are often made, at least in part, out of modest accumulations in savings accounts on which interest is paid or dividends accrue. While such accounts may be technically classified as investments, it seems clear that they are not the type of "permanent investments" to which this Court referred in *Trotter v. Tennessee*, 290 U.S. at 357. See *infra*, pp. 19-23.

Moreover, the necessary holding of the court below is that the protective reach of the statute extends only to benefit monies kept under one's roof, on one's person, or in a checking account. Such a conclusion runs counter to the present day practice of thrift

and saving, virtues which have been long extolled and are everywhere encouraged. From the child who saves by bringing in some small deposit to school to the wage earner who prudently places in a checking account only an amount necessary to meet frequently recurring obligations, and saves the rest for "the rainy day," the people of this country, including those receiving veterans benefits, use savings as a normal method of receipt and retention of monies. As this Court concluded in *Lawrence v. Shaw*, 300 U.S. at 249, 250, exemption under this Act applies to the "usual methods of receipt" which "must be deemed available so that the amounts paid by the Government may be properly safeguarded and used as the needs of the veteran may require".

To draw the protective line at checking accounts tends to defeat the purpose of the statute to preserve the means disbursed for the beneficiary's maintenance and support and the necessities of life today. While checking may be a more expeditious method of paying current debts than withdrawals from a savings account, it is an equally expeditious way of wasting money which ought to be accumulated for longer-range necessities. See, *e.g.*, *Rucker v. Merck*, 172 Ga. 793, 159 S.E. 501. And yet, under the decision below, to obtain immunity under 38 U.S.C. 3101 (a), a woman receiving widow's benefits under veterans' legislation must keep those monies, perhaps intended as a source of maintenance and independence in later life, either on her person, under her roof, or in a checking account. The benefits paid on behalf of a child, perhaps intended in large part for later

schooling, must be similarly treated. We need not belabor the point that such practices, in lieu of utilizing the normal mode of a savings account, could lead to an improvidence which Congress would hardly have sought to encourage. See *e.g.*, *Yake v. Yake*, 170 Md. 75, 183 A. 555; *Rucker v. Merck*, *supra*.

Nor does the decision below take realistic account of the maintenance and support requirements of the incompetent veteran, like the present petitioner, institutionalized by reason of his service-connected disability. The maintenance and support requirements of such a veteran cover both the period of confinement and the period when, if rehabilitation is possible, he may be released to attempt to readjust as a normal member of society. If his disability payments will lose immunity simply because his committee or guardian believes at least part of these payments are not necessary for immediate expenses and should earn a little income in a savings account, the veteran's ability to fall back on such funds upon release is undermined. Such a result cannot be ascribed to Congress merely because benefit monies were placed in a savings rather than a checking account.<sup>19</sup>

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<sup>19</sup> It should be noted, in this connection, that since 1958 compensation payments to an incompetent veteran, institutionalized in a federal or state institution and without wife or child, like Porter, are discontinued if his estate exceeds \$1500, and are resumed again only when his estate is reduced to \$500 or less. 38 U.S.C. 3203(b). Thus, in most instances, if the incompetent veteran's relatively small estate is nonexempt, by virtue of being deposited in a savings account, he may have very little in the way of savings to face readjustment upon release.

(b). Aside from assuring the availability of funds for the basic maintenance and support of veterans and their families (the essential reason for the enactment of the exemption), benefit funds deposited in a savings account meet the two other standards for exemption established by this Court in *Trotter*—

(1) they retain their essential quality as monies and do not represent a real conversion into property, and (2) they do not reflect “permanent investments” going beyond the normal retention of funds for maintenance and support. In *Trotter*, as we have noted, the Court ruled that the statutory exemption ended when the benefits “lost the quality of moneys and were converted” into property. 290 U.S. at 356. See, also, *Elbert Sales Co. v. Granite City Bank*, 55 Ga. App. 835, 192 S.E. 66. Thus, in *Trotter*, the purchase of land and buildings, and in *Carrier v. Bryant*, the purchase of negotiable notes and bonds, represented a real conversion of the benefit monies, a purchase of property; consequently, the property purchased was held beyond the ambit of protection under the provision of the statute excepting purchased property from the exemption (see *supra*, pp. 12, 14). On the other hand, where the moneys were deposited in a checking account (in *Lawrence v. Shaw*) the Court held that the exemption applied, and by implication that no purchase of property had occurred as in the other two cases. Accord: *Williams v. United States Fidelity & Guaranty Co.*, 107 F. 2d 210 (C.A. D.C.).

In the case at bar, it seems clear that the uninvested benefit monies deposited in a savings account have

not "lost the quality of moneys" (*Trotter, supra* at 356), and do not reflect any conversion into property within the meaning of the statute and this Court's definition of that standard. The monies represented by the deposits are easily traceable and are readily available for withdrawal regardless of the right of either a bank or federal savings and loan association to defer payment for a short period of time.<sup>20</sup> The only real differences between a savings account depositor and a checking account depositor are that the former draws a little interest or dividend on his account and has to present his passbook for withdrawal of funds, rather than write a check. Those minimal differences are not, we submit, sufficient to deprive benefit proceeds of their identity when placed in a savings account.<sup>21</sup>

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<sup>20</sup> We show in Point C, *infra*, that the fact that a depositor in a savings and loan association is, for certain legal purposes, a shareholder rather than a creditor, which is the relationship of a depositor to a bank, does not affect our position that, for the purposes of the exemption statute, he has not converted his benefits into property.

<sup>21</sup> Even in the case of certain purchases of property from benefit proceeds, the statutory immunity is not lost (in our view), i.e., with respect to purchases of food, clothing and other ordinary and necessary needs that Congress was making possible by means of its disbursement. While different types of purchases might present questions of fact, in line with Judge Prettyman's reasoning in his dissenting opinion below (R. 53-54), we do not believe that such a factual question is presented as to a savings account which should be considered, as a matter of law, a normal mode of retention of funds (*Lawrence, supra*, at 249) always available for purposes of maintenance and support and therefore always exempt. See the discussion, *infra*, pp. 23-25.

Neither do these insubstantial differences place savings accounts in the category of "permanent investments" while checking accounts retain their immunity under the rule of *Lawrence v. Shaw, supra*. The court below placed great reliance on the fact that these deposits draw interest or dividends and are technically share accounts in the savings and loan associations; for this reason, the court felt that the deposits fall into the category of investments and thus are not exempt (R. 51-52). The mistake lies in emphasizing an abstract, fixed definition of the term "investment", a word which does not even appear in the statute. "Investment" must be interpreted in the context in which the Court actually used the word, not as it might be read in other fields to which other considerations are applicable.<sup>22</sup>

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<sup>22</sup> Emphasis on the abstract term "investment", without examination of the basic statutory purpose of maintenance and support and of this Court's restricted use of the term in *Trotter*, led the court below to rely on the fact that Porter's committee deposited the funds in issue pursuant to Rule 23 of the Rules of the District Court providing for "investment" of trust funds (R. 51). As the District Court pointed out, however (R. 29), seizing on this word in the rule does not provide an answer to the question under 38 U.S.C. 3101(a).

The same sort of emphasis has led two state courts to reach decisions consistent with the majority ruling below with regard to savings bank deposits. *In re Bowen*, 141 Ohio St. 602, 49 N.E. 2d 753; *Hale v. Gravalles*, 340 Mass. 96, 162 N.E. 2d 817; 340 Mass. 722, 166 N.E. 2d 557.

While it is not certain from the opinions whether savings or checking accounts were involved, at least five other state courts have held that bank deposits are exempt under these statutory provisions. *Derzis v. Vafes*, 227 Ala. 471, 150 So. 461; *Wilson v. Sawyer*, 177 Ark. 492, 6 S.W. 2d 825;

The word was used by the Court for the first time in this connection in *Trotter*, not to exclude from exemption any disposition of benefits which might be classified as a technical investment, but only to exclude "permanent investments" not commonly regarded as sources of maintenance and support, such as an investment in land or buildings. The Court noted that exemption should not be extended to the trader in property who was utilizing the benefit proceeds beyond the normal and customary modes of receipt and retention. And, in *Lawrence*, the Court held that the usual methods of receipt and retention of monies should be immunized. In that same opinion, the Court, in commenting on bank deposits, stated that "we do not suggest that a mere allowance of interest upon deposits would be enough to destroy an immunity where it would otherwise attach" (300 U.S. at 250).

Under these standards, a savings account is not a "permanent investment" utilized by one trading in property. In the United States, today, it has become, as we have noted, a usual method of receipt and retention of monies for maintenance and support. The mere allowance of interest on the deposit, as this Court stated in *Lawrence v. Shaw*, should not control to destroy immunity. If, as held in *Lawrence*, Congress intended to immunize proceeds deposited in a checking account, that intention reasonably extends to the proceeds in a savings account as well. This

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*Payne v. Jordan*, 152 Ga. 367, 110 S.E. 4; *Elbert Sales Co. v. Granite City Bank*, 55 Ga. App. 835, 192 S.E. 66; *Speer v. Pierce*, 18 Tenn. App. 351, 77 S.W. 2d 77.

result should obtain unless the provisions of 38 U.S.C. 3101(a) are to be read "so grudgingly as to thwart the purpose of the lawmakers" (*Trotter*, 290 U.S. at 356).

2. While we agree with that part of the dissenting opinion below which is critical of the majority for basing its decision on a fixed concept of the term "investment", we do not agree with Judge Prettyman's view that exemption of savings accounts should be dependent upon a factual demonstration that the funds have been set aside to meet contemporary or anticipated needs for maintenance and support (R. 53-54).

This proposed approach ignores the almost universal need and desirability for savings to meet, according to contemporary mores, the real demands of maintenance and support. As we have indicated, a generally accepted practice is to set aside in savings whatever amount one can to meet future but inevitable contingencies. The factual inquiry suggested by Judge Prettyman would not, it would seem, add much enlightenment. The testimony reasonably to be expected is that a savings account is available for any need not covered by a checking account (or by funds on hand)—thus satisfying the maintenance and support test that should be applied.<sup>23</sup>

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<sup>23</sup> If a factual inquiry as to intended use is necessary, this Court presumably would have ordered one in *Lawrence v. Shaw*, since even a checking account, in a given case, might not be drawn upon any more frequently for maintenance and support than monies in a savings account.

Moreover, the requirement of a trial as to the actual or intended use of the monies in a savings account would tend to eliminate the very benefits which Congress was endeavoring to protect through the exemption statute. Such litigation in the case of the numerous beneficiaries who may have savings accounts in which they deposit sums from benefit payments would eat into those benefits through attorneys' fees and other litigation expense.<sup>24</sup> Though there are doubtless some beneficiaries who are sufficiently affluent that they do not contemplate drawing upon savings accounts for maintenance and support, the fact is that creditors of this class of individuals would likely have recourse to other non-exempt assets. In any event, it is fair to assume that beneficiaries in this category are in such a distinct minority that their existence would provide a most insubstantial reason for requiring case by case determination of the immunity of savings accounts. Congress can properly be taken to have considered that the vast majority of the beneficiaries under laws administered by the Veterans Administration would have normal recourse to savings for necessary expenditures

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<sup>24</sup> As noted in the memorandum for the United States as *amicus curiae* in this case, the exemption question presented here may potentially affect the 12 million recipients of billions of dollars in benefits disbursed annually under laws administered by the Veterans Administration. Approximately 460,000 of these (of whom 105,200 are incompetent veterans) are under legal disability. We are advised by the Veterans Administration that, as of June 30, 1961, these beneficiaries had estates in excess of \$750,169,000, nearly all of which was derived from veterans benefits.

and thus to have immunized the entire class, just as checking accounts as a class are immune. It is preferable to base the status of a type of account, as exempt or not exempt, on an objective evaluation of the general purposes and uses of the device rather than to require an investigation in each individual case into the particular treatment by that particular person of his particular account.

***C. Benefit Monies Deposited in a Savings Account in a Federal Savings And Loan Association Are Likewise Exempt under 38 U.S.C. 3101(a).***

The court below, in holding that petitioner's savings accounts are not exempt under the Act, relied in part on the view that, even if a savings account in a bank is exempt, a savings account in a federal savings and loan association is not exempt. The differences between these two types of accounts, however, are technical and legal and are far outweighed by their similarities when the issue is viewed from the perspective of the benign legislative purpose of this Act. Savings accounts in banks and those in federal savings and loan associations stand on the same footing with respect to the aim of protecting maintenance and support benefits, as well as the two criteria for this exemption heretofore established by this Court: (1) the prerequisite that the benefits do not lose their quality as monies and (2) that no permanent investment is involved.

The pertinent similarities between the two types of savings accounts are plain. Both are called savings accounts, they are advertised and are commonly

understood as such<sup>25</sup> (R. 53, 26). Both types of savings accounts, the account in the commercial or savings bank and its counterpart in the federal savings and loan association, are insured against loss up to \$10,000—in the case of the bank by the Federal Deposit Insurance Corporation and in that of the association by the Federal Savings and Loan Insurance Corporation. While both the bank and federal savings and loan association may defer payment on withdrawal by a depositor for a stated period of time, both, as a matter of practice, normally pay on demand<sup>26</sup> (R. 53, 26).

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<sup>25</sup> Cf. *Wisconsin Bankers Association v. Robertson*, 294 F. 2d 714 (C.A. D.C.), certiorari denied, 368 U.S. 938, where, in his concurring opinion, Judge Burger acknowledged that “these associations are indeed coming to be regarded by the public much as the equivalent of a bank.” 294 F. 2d at 717. The regulations of the Federal Home Loan Bank Board, governing federal savings and loan associations, describe accounts in such associations as “savings accounts”. 12 C.F.R. 541.3, *et seq.* The legislative history of Section 5 of the Home Owners Loan Act of 1933, 48 Stat. 132, as amended, 12 U.S.C. 1464, authorizing organization of federal savings and loan associations, also makes it plain that Congress was aware that these associations would compete for private savings funds. H. Rep. No. 55, 73d Cong., 1st Sess. p. 2. See also S. Rep. No. 91, 73d Cong., 1st Sess. p. 2. See, also, the remarks of Representatives Thom and Hancock with regard to insurance of accounts in savings and loan associations (78 Cong. Rec., Part 10, at 11209), and the remarks of Representatives Reilly, *id.* at 11195-96.

<sup>26</sup> The court below emphasized this right of defendant as a characteristic of an “investment” (R. 52). Aside from the fact, as we have shown, that the issue here is not properly characterized as what, in the abstract, constitutes

With regard to the earning of income on the money deposited, while the bank calls such income interest and the federal savings and loan association terms it a dividend, the fact remains that on both types of accounts the deposits earn a modest rate of income which may be a fraction of a percent higher on the savings and loan account. Moreover, in both instances, the benefit monies, or more accurately reserves maintained by the institutions, are readily available for withdrawal; meanwhile, the benefit monies are utilized, upon deposit, by the bank or the savings and loan association in restricted commercial enterprises.<sup>27</sup>

It is true, as the majority below points out, that a depositor in a federal savings and loan association is, in a strict legal sense, an investor who is a shareholder with voting rights rather than a creditor of the association.<sup>28</sup> It is also true that a deposit in an association may earn a fraction of a percent higher

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an "investment", even the court below recognized that this right of deferment on a savings and loan association account was no different from the bank's right of deferment on a savings account (R. 52).

<sup>27</sup> The organization and operation of federal savings and loan associations are, of course, under the strict supervision of the Federal Home Loan Bank Board. See 12 C.F.R. 541.1 *et seq.*

<sup>28</sup> Thus, Section 5 of the Home Owners Loan Act of 1933, 48 Stat. 132, as amended, provides in relevant part as follows:

**Federal Savings and Loan Associations—Organization Authorized.**

(a) In order to provide local mutual thrift institutions in which people may invest their funds \* \* \*.

income than a bank deposit, which is undoubtedly the greatest motivating factor for deposits in such associations. Nor do we dispute that for other questions, not involving the exemption provisions at issue here, these differences may be decisive. Cf. *Wisconsin Bankers Association v. Robertson*, 294 F. 2d 714 (C.A. D.C.), certiorari denied, 368 U.S. 938.<sup>29</sup> We emphasize again, however, that the question posed here should not be whether petitioner is an "investor", in some sense of the word, by reason of the deposits in federal savings and loan associations, but rather whether those deposits, identified as to their origin, meet the criteria for the veterans' benefit exemption set forth in the statute and the decisions of this Court.

Upon this issue, the similarities between bank and federal association savings accounts are controlling.

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<sup>29</sup> The question in *Wisconsin Bankers* was whether certain regulations of the Federal Home Loan Bank Board providing for the organization and operation of federal savings and loan associations were invalid in that they permitted these associations to raise capital by means of "deposits", specifically prohibited by Section 5 of the Home Owners Loan Act of 1933. Holding that these deposits or accounts were technically shares in the association and that the depositor was a shareholder rather than a creditor, the Court of Appeals held the regulations valid as not permitting illegal banking. As Judge Burger noted in his concurring opinion, the "legal realities" of the question there were obviously controlled by the technical legal relationship between depositor and association. 294 F. 2d at 717. In this case, however, as the government stated in its brief in opposition to the petition for a writ of certiorari in the *Wisconsin Bankers* case, pp. 8-9, the issue is controlled by the purposes and coverage of the liberal exemption provision established by Congress.

Both savings devices are unquestionably used in the same fashion, generally, for retention of monies to afford the maintenance and support provided by the Veterans Administration benefit payments and protected by Congress in this statute. While the depositor in a federal savings and loan association is technically a shareholder, his deposit, under the criteria advanced in the *Trotter*, *Lawrence*, and *Carrier* cases, is no more a purchase of property than is a deposit in a bank. Both deposits retain, in essence, "the quality of moneys" permitting the veteran a convenient mode of use to meet his needs and obligations. And, finally, while the relationship of depositor to federal savings and loan association is, in the strict legal sense, an investment relationship (cf. the *Wisconsin Bankers* case, *supra*), the investment made by depositing benefit monies in a savings account in an association is, as we have shown, not the "permanent investment" of the trader in securities, land or buildings excluded from immunity by the earlier decisions of this Court.

### CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment below should be reversed.

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FEBRUARY 1962